

### **REMARKS**

Claims 1-18 are pending and await further action on the merits. Claims 1-9, 15, 16 and 18 have been withdrawn from consideration as being drawn to nonelected subject matter.

The specification has been amended to include headers to sections. Also, trademarks have been amended to be in all capital letters.

Claims 1-4, 6, 7 and 10-16 have been amended for clarity.

No new matter has been added by way of the above-amendment.

#### **I. Restriction Requirement**

The Examiner makes Final the prior restriction requirement. Applicants respectfully remind the Examiner that the Examiner indicated the subject matter of claim 18 (Group VII) would be rejoined with the elected claims 10-14 and 17 (Group V) upon the allowance of claims 10-14 and 17.

#### **II. Specification Headings**

The Examiner suggests that applicants amend the specification to insert applicable headings. In response, the specification has been amended to the extent that the sections correspond to the sections listed by the Examiner in the outstanding Office Action. As such, withdrawal of the objection is respectfully requested.

#### **III. Objection to Specification**

The Examiner requests that Applicants capitalize all trademarks recited in the specification. In response, Applicants have capitalized trademarks in the specification. As such, withdrawal of the objection is respectfully requested.

#### **IV. Rejection under 35 USC 101**

Claims 10-14 are rejected under 35 USC 101. Applicants respectfully traverse the rejection.

Specifically, the Examiner objects to the fact that claims 10-14 are directed to multiple "compounds" instead of a single compound. In response, Applicants have followed the Examiner's suggestion and have amended the preamble of claims 10-14 to read in the singular. As such, withdrawal of the rejection is respectfully requested.

#### **V. Rejection under 35 USC 112 (paragraph one)**

Claims 10-13 and 17 stand rejected under 35 USC 112 (paragraph one). Applicants respectfully traverse the rejection.

Specifically, the Examiner has taken the position that the specification, while found enabling for compounds or compositions in which R<sup>1</sup> and R<sup>2</sup> form a 5- or 6-membered nitrogen-containing heterocyclic with either zero or one oxygen or sulfur atoms present, and L<sup>2</sup> present on the phenyl ring, is allegedly not enabling for "all of the compounds and residue groups listed within the claims, including most of the groups found in R<sup>b</sup>."

In response, Applicants have amended the various meanings of the groups R<sup>1</sup>/R<sup>2</sup>, R<sup>a</sup> and R<sup>b</sup> to include groups which are exemplified at least once in the examples in the specification or the additional examples in the enclosed Declaration under 37 CFR 1.132 by Dr. Haden. As such, the scope of the presently claimed invention is clearly enabled and withdrawal of the rejection is respectfully requested.

#### VI. Rejection under 35 USC 112 (paragraph two)

Claim 11 stands rejected under 35 USC 112 (paragraph two) as not distinctly claiming the invention. Applicants respectfully traverse the rejection.

In support of the rejection, the Examiner takes the position that claim 11 is incorrectly dependent upon claim 10, as an inconsistency allegedly exists between the limitations of the two claims. Specifically, the Examiner objects to claim 11 for reciting a genus of R<sup>1</sup> and R<sup>2</sup> which does not have complete overlap with the genus of R<sup>1</sup> and R<sup>2</sup> in claim 10.

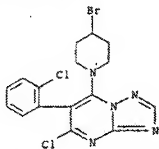
In response, Applicants have amended claim 11 to reflect the same language as claim 10 with respect to R<sup>1</sup> and R<sup>2</sup>.

As such, withdrawal of the rejection is respectfully requested.

#### VII. Rejection of Claims 10-14 and 17 under 35 USC 102(a)

Claims 10-14 and 17 stand rejected under 35 USC 102(a) as being anticipated by Schmitt et al. Applicants respectfully traverse the rejection.

The Examiner specifically cites the following compound for anticipating the presently claimed invention:



RN 388060-68-2 CAPLUS  
CN {1,2,4}Triazolo[1,5-a]pyrimidine, 5-chloro-6-(2-chloro-4-nitrophenyl)-7-(4-methyl-1-piperidinyl)- (9Cl) (CA INDEX NAME)

The Examiner will note that inventive claim 10 does not encompass this compound of Schmitt et al., since the heterocycle formed by R<sup>1</sup> and R<sup>2</sup> in inventive claim 10 can only be substituted with an alkyl group and not a bromine group as in the compound of Schmitt et al. and because inventive claim 10 requires that at least one of L1, L2 and L3 is not hydrogen.

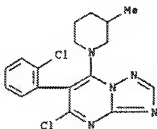
Furthermore, although there is a generic overlap between formula (I) of the present invention and formula (1) of Schmitt et al., none of the explicitly disclosed compounds in Schmitt et al. is covered by the amended claims. Schmitt et al. fail to disclose the specific structure of the inventive compounds, which is, *inter alia*, characterized by the cyclic amino group in position 7 and the specific substitution pattern of the phenyl ring in the 6-position (of the triazolopyrimidine scaffold). The working examples and the additional use examples and comparative tests in the Declaration demonstrate the excellent fungicidal activity of the inventive compounds. Since Schmitt et al. are concerned with anticancer agents, this document cannot provide any hint how to modify the compounds of the general formula (1) in order to arrive at compounds which show excellent activity against phytopathogenic fungi.

Accordingly, the subject matter of claims 10 to 14 and 17 is not anticipated by and non-obvious vis a vis the teaching of Schmitt et al. and withdrawal of the rejection is respectfully requested.

#### **VIII. Rejection of Claims 10-13 and 17 under 35 USC 102(b)**

Claims 10-13 and 17 stand rejected under 35 USC 102(b) as being anticipated by Pees et al. Applicants respectfully traverse the rejection.

The Examiner specifically cites the following compound for anticipating the presently claimed invention:



RN 187233-45-0 CAPLUS  
CN [1,2,4]Triazolo[1,5-a]pyrimidine, 5-chloro-6-(2-chlorophenyl)-7-(4-methyl-1-piperidinyl)- (9CI) (CA INDEX NAME)

The Examiner will note that inventive claim 10 does not encompass this compound of Pees et al., since inventive claim 10 requires that at least one of L1, L2 and L3 is not hydrogen.

Furthermore, although there is a generic overlap between formula (1) of the present invention and formula (I) of Pees et al., none of the explicitly disclosed compounds in Pees et al. is covered by the amended claims. Pees et al. fail to disclose the specific structure of the inventive compounds, which is, *inter alia*, characterized by the cyclic amino group in position 7 and the specific substitution pattern of the phenyl ring in the 6-position (of the triazolopyrimidine scaffold). Pees et al. do not provide any motivation to make the specific modifications to arrive at the compounds of the invention.

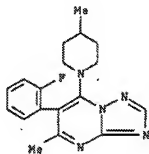
In addition, the comparative tests in the Declaration demonstrate the superior fungicidal activity of compounds of the invention in comparison with structurally most closely related compounds disclosed in Pees et al. The superior fungicidal activity of the inventive compounds could not be expected in view of Pees et al.

Accordingly, the subject matter of claims 10 to 13 and 17 is not anticipated by and non-obvious vis a vis the teaching of Pecs et al. and withdrawal of the rejection is respectfully requested.

**IX. Rejection of Claims 10-12 and 17 under 35 USC 102(b)**

Claims 10-12 and 17 stand rejected under 35 USC 102(b) as being anticipated by Pfengle et al. JP '581 and Pfengle et al. U.S. '360 (hereinafter both references are referred to as "Pfengle et al."). Applicants respectfully traverse the rejection.

The Examiner specifically cites the following compound for anticipating the presently claimed invention:



RN 220482-09-7 CAPLUS  
CN {1,2,4}Triazolo[1,5-a]pyrimidine, 6-(2-chlorophenyl)-5-methyl-7-(4-methyl-1-piperidinyl)- (9CI) (CA INDEX NAME)

The Examiner will note that inventive claim 10 does not encompass this compound of Pfengle et al., since inventive claim 10 requires that at least one of L1, L2 and L3 is not hydrogen.

Furthermore, although there is a generic overlap between formula (I) of the present invention and formula (I) of Pfengle et al, none of the explicitly disclosed compounds in either reference is covered by the amended claims. Pfengle et al fail to disclose the specific structure of

the inventive compounds, which is, *inter alia*, characterized by the cyclic amino group in position 7 and the specific substitution pattern of the phenyl ring in the 6-position (of the triazolopyrimidine scaffold). Pfrengle et al do not provide any motivation to make the specific modifications to arrive at the compounds of the invention.

In addition, neither of the preferred structures of the phenyl group in Pfrengle et al (see e.g. U.S. '360, col. 4) by itself corresponds to the respective phenyl group in formula (I) of the present invention.

Accordingly, the subject matter of claims 10 to 12 and 17 is not anticipated by and non-obvious vis a vis the teaching of Pfrengle et al. and withdrawal of the rejection is respectfully requested.

#### **X. Double Patenting Rejection**

Claims 10-14 and 17 stand provisionally rejected under the ground of obviousness-type double patenting over claim 1 of U.S. publication 2007/0078149. Applicants respectfully traverse the rejection.

Applicants note that the instant application has an earlier filing date than that of the noted publication. Accordingly, the Examiner should let the present application issue, and if any double patenting issues remain, they should be handled in the noted publication by amendment or Terminal Disclaimer.

In view of the above amendment, applicant believes the pending application is in condition for allowance.

Conclusion


In view of the above remarks, it is believed that claims are allowable.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Garth M. Dahlen, Ph.D., Esq., Reg. No. 43,575 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.14; particularly, extension of time fees.

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Respectfully submitted,

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Attachment: Declaration (Unexecuted)